

REMARKS

The Office Action mailed September 6, 2002 has been carefully considered by the undersigned attorney on behalf of the inventors. Amendment to this application have been presented in response to the office action, particularly based on the examiner's reasons for allowance.

In that Office Action, the formal drawings which applicants filed on March 7, 2002 were objected to as "discolored". While those formal drawings were prepared with solid black lines on white paper in general conformity to the rules for such drawings and were not believed to be discolored, new formal drawings are submitted with this Amendment.

The allowance of Claims 1-6, 9, 10 and 14 is noted with appreciation. The Examiner has provided some reasons for allowance of these claims in this Office Action. Claims 7, 8 and 11-13 were rejected as anticipated under 35 USC 102(b) by the Green et al. patent, U.S. 5,664,110 entitled "Remote Ordering System".

Reconsideration of this rejection of Claims 7-8 and 11-13 is respectfully requested. It is submitted that the Green et al. reference fails to either disclose or suggest key portions of the invention, for example, as claimed in these rejected claims. These rejected claims, including independent Claim 7 and Claim 11, includes the requirement that the potential consumer is located proximate (or near) a fixed merchant at the time of the communications. This "nearness" or proximity between the consumer and the merchant(s) is advantageous in that it can facilitate an in-person transaction between the merchant and the consumer, but such nearness is not seen in the prior art patent to Green et al. The nearness or proximity also means that the consumer is

communicating with a limited number of merchants, not hundreds or thousands of merchants who may offer the particular item which the consumer proposes to purchase.

In contrast, the system described in the prior art patent to Green et al. does not involve any geographic limitation and, in fact, envisions that communication be established from anywhere telephones or a network such as the Internet is available (see Column 4, line 61 through column 5, line 21). Thus, the merchant and the consumer in the Green et al. system could be anywhere in the world (or in "outer" space, even, if suitable communication hookups exists from the party) and does not facilitate an in-person transaction between the consumer and the merchant (the Green et al. patent calls its system a "remote ordering system" repeatedly, e.g., in the Title, the Abstract, and the first lines of each of the Field of the Invention, the Background of the Invention, and the Detailed Description, emphasizing the remoteness of the consumer and the supplier whereas the present invention is directed to a system where the merchant and the consumer are relatively nearby. Thus, while the Green et al. system is a "remote ordering system", applicant's system is one which uses local exchange of information between a merchant and a nearby consumer. It is presumed that the Green et al. system is for communication to a selected supplier ("convey the list to a merchant", see Col. 4, line 42) who may or may not be within any particular geographic area, whereas the applicant's system could be used to broadcast a particular purchase to the merchant(s), known and unknown, within a limited geographic area and then receiving proposals from the merchant(s) who choose to respond to a proposed transaction. As disclosed in the present application, the proximate area for communications with merchants might be a shopping mall or other area which is defined by a global positioning system or by a limited area wireless communications system which has an inherent geographic limitation like the Bluetooth system.

Accordingly, it is urged that the independent claims of applicants' patent application each define over the cited art and are therefore allowable. In addition, the claims which depend from these independent claims are similarly believed to be allowable by depending from independent claims which are allowable.

Further, the newly presented claims (Claims 15-21) are directed to the feature which was indicated as allowable in the examiner's statement of reasons for allowance and each of these newly-presented claims are believed to be allowable for the reasons given by the examiner in his reasons for allowance.

The undersigned agrees with the Examiner that using a wireless device to receive a proposed offer from one merchant and transmit that offer to a second merchant is not taught or suggested in the cited prior art, the closest of which is the prior art patent to Green et al. However, the applicants provides these comments regarding the examiner's reasons for allowance. Each claim of a patent application is to be read in its entirety and may include other elements which contribute to its patentable nature. In other words, while some portions may not be found, the other portions of the claims are not to be ignored and each claim is to be read for the totality of the elements that it includes, not just an element which may be indicated in any reason for allowance. As pointed out above, the present invention also includes some claims which are directed to providing a "local" communication (a proximity) between a merchant and a possible consumer while the consumer is located near or proximate to the merchant to facilitate a local interaction between the customer and the merchant if that is desired (such in person negotiations may or may not be desired by the consumer depending on the circumstances of the situation-- for example, the consumer may wish to pick up a small purchase or inspect it, but the consumer may wish the merchant to deliver a large purchase; the consumer also may

wish to inspect the article or the merchant's facility or he may wish to avoid any sales presentation until he is ready to buy). The feature of proximate communications (which is present in selected claims) is not seen in the art which has been applied (and is not seen in any of the known art) and the importance of this feature in adding to the patentability of those claims which include it should not be diminished. Certain claims are also directed to storing consumer preferences in the portable wireless device which are communicated to the merchant(s) and for using particular methods for determining which merchant is proximate to the consumer for determining with which merchants) the consumer will communicate. Additionally, some of the claims relate to a system in which a merchant proposes an alternative to the item requested in the merchant's bid. Thus, the feature discussed in the examiner's reasons for allowance should not be considered as the sole novel or patentable feature of any claim nor that other features not mentioned do not distinguish from the prior art.

Accordingly, it is urged that all of the claims presently pending in this patent application (Claims 1 - 21) patentably differentiate the present invention from the prior art which has been made of record and considered by the applicants and the Examiner.

Applicants and their attorney are interested in getting this patent application in condition for allowance, especially in view of the Examiner's determination that at least some of the pending claims are allowed over the prior art. If applicants' attorney can assist the Examiner in getting this application in condition for allowance of all claims, a collect call to the undersigned is authorized at the Examiner's convenience.

Please charge the fees for this Amendment to Deposit Account 09-0452 in the name of International Business Machines Corporation. It is believed that the fee for this paper is \$186, based on two new independent claims (2x\$84) and one total claim in excess of twenty (\$18).

If any additional fee is due in connection with the filing of this paper, including the fees for adding additional claims or for other patent application processing fees, the Patent Office is authorized to charge Deposit Account 09-0452 in the name of International Business Machines Corporation.

Respectfully submitted,
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